IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 691 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARATBHAI MANIYABHAI DAMOR & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
Ms. Nita C Banker, for the appellants.
Ms. Nandini Joshi, Addl. Public Prosecutor for the respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

ORAL JUDGMENT

The present appeal has been preferred against the judgment and order dated 27th March, 2002 in

Sessions Case No. 41 of 1998 passed by the learned Additional Sessions Judge, Panchmahals, camp at Dahod, whereby the appellants have been convicted for the offence punishable under section 304 part II of the Indian Penal Code and sentenced to undergo simple imprisonment for seven years and ordered to pay a fine of Rs. 2000/- by each, in default, to undergo further simple imprisonment of two months to both the appellants-accused.

2. Brief facts lading to the present appeal are that on 1st June, 1997, when the complainant Amarsing Mahendrabhai Sangada, -who died later on- was going to his house at village Khakharia, after attending one family function in Zalod, he was assaulted by the present two appellants and other two accused at 1.00 a.m. The appellant no.1 Bharatbhai Damor caused injuries to the deceased with stick on the vital part of the body, i.e. On head and the appellant no. 2 Rasulbhai Damor assaulted the deceased with a belt and had also given threat to the deceased as to why the complainant (who was studying in 10th standard and was aged 15 years) was keeping relations with their sister. Immediately, the complaint was registered on 1.6.1997 at 13.20 hours. Thereafter, medical treatment was also given and the complainant Amarsing expired on3rd June, 1997 at 1.00 a.m. i.e within

48 hours from assault. As soon as the parents of the deceased and other witnesses came to know that Amarsing was assaulted, they immediately rushed to the place of offence and mother Maliben Mahendrabhai, P.W.1 and father Mahendrabhai Sangada -P.W. .2 inquired from their son as to who had caused injuries to him and hence the complainant Amarsing informed them that the present appellant and others had caused injuries to him on the allegation as to why Amarsing was keeping relations with their sister. Dineshbhai- P.W.8- an independent witness, had also immediately rushed at the scene of offence who was also informed by the complainant that present two appellants alongwith other accused had caused injuries to him. Thus, the complaint which is signed by the deceased Amarsing and oral dying declaration before P.W. Nos. 2,4 and 8 were taken into consideration by police during investigation alongwith Doctor's certificate and upon completion of investigation, a charge-sheet was filed against the appellants and other accused and after examining prosecution witnesses and looking to the medical evidence, scene of offence panchnama, post mortem note etc., the present appellants have been convicted for the offence punishable under section 304 part II of the Indian Penal Code, whereas rest of the accused have been acquitted by the trial court vide its above judgment.

3. I have heard the learned counsel for the appellants who has mainly submitted that the FIR has been filed at much belated stage and there is no explanation as to delay for the late lodging of FIR. Moreover, there is no eye witness to the present incident. Thirdly, it is submitted that the complainant Amarsing who expired lateron was in unconscious state of mind and therefore, neither complainant nor P.W. Nos. 1, 2 and 8 ought to have been believed by the trial court. In the unconscious state of mind, he cannot give any complaint nor can he give names of the appellants. This aspect of the matter has not been appreciated by the trial court. It is also submitted by the learned counsel for the appellants that the prosecution has failed to prove the guilt of the present appellants beyond reasonable doubt. In fact, at 1.00 a.m., that is, at night hours, the complainant could not identify the present appellants. This aspect of the matter has also not been appreciated by the trial court and therefore, the order of conviction and sentence passed by the trial court deserves to be quashed and set aside.

4. I have also heard the learned Additional Public Prosecutor who has submitted that the deceased Amrsing has given his FIR signed by him before Dahod police station, which is explicitly clear by the deposition of

P.W. 8 at exh. 33, and by the deposition of Motibhai Maljibhai who recorded FIR at exh. 34. Even looking to the deposition of Dr. Yashvantsinh P.W. 4 at exh. 20 and the deposition of Dr. Vinodkumar Ganpatsinh P.W. 7 at exh. 27, it is clear that the patient was not unconscious. Even P.W. Nos. 1 and 2 at exhs. 12 and 17 have clearly deposed before the Court that when they rushed to the place of offence, their son Amarsing was capable enough to give names of the present appellants and they were informed that the present appellants caused injuries to him by means of a stick and belt. Even p.w. 8 Motibhai Maljibhai Katara at exh. 33 has given a clear deposition before the Court and has stated that Amarsing had given names of the present two appellants who assaulted the deceased. This P.W. 8 is an independent witness who has reduced the complaint of Amarsing in writing, has no axe to grind against or animosity with the appellants. Similarly, P.W. 8 Dineshbhai Kanaiyalal Kamol at exh.29 is also an independent witness who had also rushed to the scene of offence, where the deceased Amarsing gave the name of the appellants. Thus, from the depositions of the parents of the deceased, as well as from the deposition of independent witness at exhs. 29 and 33 and upon reading of deposition of P.W. 4 at exh. 20, that is, of Dr. Yashvantsinh and of Dr. Vinodkumar Ganpatsinh P.W. 7 at exh. 27, it is clear that the complainant Amarsing was capable to give names of the

appellants who caused assault. It is also submitted by the learned Additional Public Prosecutor that there is no delay in recording the FIR. Whenever rustic witnesses are there, they generally take some time in giving the FIR. It is clearly stated by P.W. 8 at exh. 33 that the complainant and others persons came at the police station, they were sitting and discussing and thereafter, the complaint was lodged. The nature of injuries have been narrated by P.W. Nos. 4,7 and 9 who are doctors and these witnesses have pointed out that injury nos. 1 and 2 were sufficient in the ordinary course of nature to cause death. It is vehemently submitted that despite this deposition which is given by P.W. 9 at exh. 35, the accused have been convicted for the offence punishable under section 304 part-II. It is submitted by the learned Additional Public Prosecutor that in fact, the accused ought to have been convicted and sentenced for the offence punishable under section 302 of the Indian Penal Code. Looking to para-6 of the deposition of P.W. 9 at exh. 35, that is, of Dr.Rajendra K. Srivastav, the present appellants come with an intention, with stick and belt and assaulted the complainant who ultimately expired. The deceased was studying in 10th standard and was aged about 15 years and caused injuries on his head and other parts of body. Looking to the nature of injuries, especially injury nos. 1 and 2, they were so grievous that, as per deposition of P.W. 9 at exh. 35,

they were sufficient in the ordinary course of nature to cause his death. There are no omissions and contradictions in the depositions of the prosecution witnesses. In the cross-examination of the prosecution witnesses, especially p.w. Nos. 1 and 2 and P.W. 8 at exh. 28, nothing has been shaken away or taken away and therefore, the trial court has rightly appreciated the evidence of the prosecution witnesses and the appellants have been rightly convicted and sentenced for the offence punishable under section 304 part-II of the Indian Penal Code.

5. Having heard the learned advocates for both the sides and looking to the evidence on record, I am of the opinion that the judgment and order dated 27th March, 2002 in Sessions Case no. 41 of 1998 passed by the learned Additional Sessions Judge, Panchmahals, camp at Godhra is absolutely true and correct and in consonance with the evidence on record. I therefore, see no reason to take any deviation from the conclusions arrived at by the trial court, both, for conviction as well as for quantum of punishment, especially for the following facts and reasons.

(i) Amarsing, who is a complainant, who was studying in 10th standard and aged about 15 years was assaulted by the present two appellants and the

appellant no.1 caused injuries on the vital part of the body, that is, on head, by stick and the appellant no. 2 caused injuries by a belt on other parts of the body for taking revenge of the fact that Amarsing was keeping relations with their sister. The incident had taken place at 1.00 a.m. On 1st June, 1997 at village Khakharia. The parents of the complainant came to know immediately and they rushed to the place of scene of offence. Both inquired and Amarsing conveyed them that the present appellants caused injuries to him for the alleged relationship with their sister. Similarly, eye witness Dineshbhai P.W.8 at exh. 29 also rushed at the scene of offence and he was also informed by Amarsing that the present two appellants had caused injuries to him. The complaint was recorded and thereafter, Amarsing was treated in the hospital, who ultimately expired on 3rd June at 1.00 a.m., that is, exactly after 48 hours of the assault. The complaint was also reduced in writing by the policeman Motibhai Maljibhai Katara exh. 33. Looking to the depositions of P.W. Nos. 1 and 2, P.W. no. 8 exh. 29 and P.W. 8 exh. 33 (in fact, it ought to be P.W. 9), it is clearly established beyond reasonable doubt that the present two appellants caused injuries to the complainant who expired within 48 hours of the injuries. The

immediate version of the complainant before P.W. Nos. 1,2 and 8 has been correctly appreciated by the trial court. Looking to the cross-examination of these witnesses, nothing is coming forward in favour of the present appellants. Thus, the depositions of P.W. Nos. 1,2 and 8 are sufficient enough to bring home the accusation of the present appellants. They immediately rushed at the scene of offence and they appear to this court trustworthy witnesses. There is no reason for this court to doubt the trustworthiness of these prosecution witnesses. There are no omissions and contradictions in their depositions.

(ii) Looking to the evidence of P.W. 4 at exh. 20 of Dr. Yashwantsinh Motisinh Bharpoda at exh. 20, who had examined the deceased Amarsing on the very same day of the incident, that is, on 1st June, 1997 at 3.00 a.m., narrated the injuries and certificate exh. 22 was issued by the said Dr. Yashwantsinh which also reveals CLW bone deep right parietal region and another injuries which is corroborative to the FIR at exh. 34 and depositions of P.W. No.1, P.W. 2 and P.W. 8. Similarly, deposition of P.W. 7 at exh. 27, deposition of Dr. Vinodbhai Ganpatprasad Bohra P.W. 7 at exh. 27 has narrated the injuries who had examined the deceased on 1st June, 1997.

Looking to the deposition of P.W. 9 Dr. Rajendra K. Shrivastav at exh. 35 who had carried out post mortem of the deceased and looking to the depositions of these witnesses, the injury nos. 1 and 2 as referred to by P.W.9 at exh. 35, especially as per para-6 of the deposition that they were sufficient in the ordinary course of nature to cause death of the deceased. P.W. Nos. 7 and 9 are the doctors who have narrated the injuries in detail. It has also been stated that the injury nos. 1 and 2 were capable of being caused by a stick, whereas, injury nos. 3,4,5 and 6 were capable of being caused by a belt. Thus, the medical evidence is corroborative to the version of the prosecution that the appellant no.1 had caused injuries by a stick on head of the deceased, whereas, the appellant no. 2 had caused injuries by a belt. Even this is a version of P.W. Nos. 1,2 and 8. Thus, there is enough corroboration to the deposition given by the prosecution witnesses and the trial court has not committed any error in appreciating these evidences and has rightly arrived at a conclusion that the appellant has committed the offence punishable under section 304 Part II of the Indian Penal Code. The offence has been proved beyond reasonable doubt by the prosecution.

(iii) The learned advocate for the appellants submitted that the depositions of prosecution witness nos. 1 and 2 ought not to have been relied upon as they are partisan witnesses. This contention is not accepted by this Court, mainly for the reason that the incident had taken place on 1st June, 1997 at 1.00 a.m. When Amarsing was beaten by the present appellants. He had fallen down and the parents came to know about the assault upon the complainant. Immediately at night hours, they rushed at the scene of offence and therefore, the parents came to know, upon inquiry, that the appellants had assaulted the complainant. There is also an independent witness, namely, P.W. 8 at exh. 29, namely Dinesh Kanaiyalal Kamol, who has also been examined and has stated the same facts before the Court. This witness has also stated how the complaint was recorded. The incident has taken place at village Khakharia. Thereafter, the parents came at the scene of offence. Thereafter, Amarsing was taken to Zalod. Amarsing was taken to Zalod in a stretcher. It is also contended by the learned advocate for the appellants that the appellants were not carrying any lethal weapons with them and therefore, there was no intention on the part of the appellants to commit a murder of the deceased. Looking to the evidence on record, it is clearly

narrated by P.W. 9 Dr. Rajendra Shrivastav at exh. 35 that the injury nos. 1,2 and 3 were sufficient in the ordinary course of nature to cause death of the death. In fact, the learned additional Public Prosecutor submitted that the offence committed by the appellants is in fact, covered by clause thirdly of section 300 of the Indian Penal Code. But enough benefit has been given by the trial court. Looking to the nature of injuries and the depositions and medical evidence by P.W. 4 at exh. 20, P.W. 7 at exh. 27 and P.W. 9 at exh. 35, the conclusion arrived at by the trial court that the appellants have committed the offence punishable under section 304 part II, is true and correct in view of the depositions of prosecution witnesses and evidence on record.

6. As a cumulative effect of the aforesaid facts and reasons, in my view, the trial court has rightly appreciated the evidence on record and has rightly concluded that the appellants have committed the offence punishable under section 304 part II of the Indian Penal Code. Even the quantum of punishment awarded by the trial court is absolutely in proportion with the guilt of the accused. I therefore, see no reason to take any deviation from the conclusions arrived at by the trial court. There

is a correct appreciation of evidence of the prosecution witnesses by the trial court. There is no substance in this appeal. Hence, the appeal is hereby dismissed. Even quantum of punishment is also adequate and in proportion to the nature of offence committed by the appellants and guilt of the accused.

7. The learned Additional Public Prosecutor submitted that the appellant no. 2 is on bail. The bail bonds of the appellant no. 2 are hereby cancelled. The appellant no. 2 is hereby directed to surrender to judicial custody forthwith.

(D.N.Patel,J)

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